

## **REMARKS**

In accordance with the above amendments, claims 10 and 18 have been amended and claims 1-9 and 25-33 have been canceled. Thus, claims 10, 12, and 16-24 remain under consideration in this application. No claim has yet been allowed.

### **Claim Rejections - 35 USC § 112**

It is gratefully acknowledged that the rejection under 35 USC § 112, second paragraph, has been withdrawn.

### **Claim Rejections - 35 USC § 103**

The claims under consideration remain rejected under 35 USC § 103(a) as being unpatentable over Marcenyac et al. (U.S. Patent Publication No. 2004/0146547 A1). This rejection is respectfully traversed for reasons that follow.

### **Claims 10, 12 and 16-17**

Applicants' amended claims clarify what they believe to be clearly patentable subject matter and are believed to also distinguish over the content of the above cited reference. The present claims 10, 12 and 16-17 clearly require an active anti-abuse substance "selected from the group consisting of binding and adsorption agents that prevent later extraction of said abusable substance of interest using a solvent selected from the group consisting of water, ethanol or combinations thereof".

(Emphasis added)

Marcenyac et al fails to teach or suggest the use of such a binding or adsorption agent which is active and operates on contact to prevent subsequent specific solvent extraction.

**Claims 18-24**

In addition, claims 18-24 require a device quite unlike any described in the reference. This embodiment requires a patch construction that includes a separator membrane between absuable substance and anti-abuse substance which is connected to the skin of a user by a separate connecting device and which remains connected to the user and to the separator membrane upon the removal of the patch from the skin of a user and thereby causes the separator membrane to be withdrawn from between the anti-abuse layer and abusable substance causing immediate contact between the two. Nothing resembling this construction is taught or suggested in the cited reference.

The embodiment of claims 18-24 produces immediate inactivation of the abusable substance upon removal of a patch from a user eliminating the need for any further step. See also Figures 2a and 2b. The anti-abuse technique is fully accomplished simply by the removal of the patch, a necessary act.

Regarding the Examiner's comment, the fact that an overall function may be similar to one shown in the art is irrelevant to patentability when the construction of a device and technique of accomplishing the function are clearly different. The conclusion on page 7 of the Action is clearly not supported by the reference

and one cannot simply ignore what are clearly different and unsuggested elements recited in applicants' claims. It is submitted that one would not conceive of applicants' arrangement and technique based on the cited reference. There is no teaching of a separately attached device that withdraws a separation membrane upon removal of the delivery patch.

It is believed that applicants' claims 18-24 do patentably distinguish over the Marcenyac et al reference, taken either singularly or in combination. Accordingly, entry of this paper, reconsideration and withdrawal of this rejection is respectfully requested.

The Cubbage et al '215 reference fails to cure the deficiencies of Marcenyac et al with respect to either embodiment.

Given the above amendments taken together with the remarks herein, Applicants remain convinced that the present claims are patentably distinct from the prior art references known to them taken either singularly or in combination and reconsideration and allowance of the claims is respectfully requested.

Respectfully submitted,  
NIKOLAI & MERSEREAU, P.A.



C. G. Mersereau  
Registration No. 26,205  
900 Second Avenue South  
Suite 820  
Minneapolis, MN 55402  
Telephone: (612) 339-7461